SINGAPORE REPORTS.

TAH KAH JOO v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) August 12, 1949]

[Singapore — Magistrate's Appeal No. 53 of 1949]

Common Gaming Houses Ordinance (Cap. 30), S. 4(c) — Distinction between the words "kept or used for gaming" and the words "kept for habitual gaming".

In this case the accused was charged as follows:—

That you on or about 12th February, 1949, at No. 44 A, Joo Chiat Road, Singapore, did assist in the management of a place, to wit the Cathay Club, kept as a common gaming house, and thereby committed an offence punishable under Section 4(c) of the Common Gaming Houses Ordinance (Cap. 30).

The Cathay Club was a registered society having as its avowed object the provision of social facilities for the members. The Club was kept under observation for several days during the Chinese New Year Festival. The raid was carried out on the 12th February, 1949. A Detective gave evidence that he took part in the games of 'Pai Kow' for money on the 10th, 11th and 12th February. Other games were also being played. An Informer also gave evidence to the effect that he had taken part in games of 'Pai Kow' on seven consecutive evenings up to and including the night of the raid. Another witness deposed that he went to the Club to gamble on three or four days between the 1st and 15th day of the Chinese New Year, including 12th February.

The learned Magistrate in one of his grounds of judgment said: "The Club was not open to the public or to any class of the public. Certain non-members, however, who were known to the President of the Club were able to make use of it during the period with which the case is concerned. I did not find that this changed the essentially private nature of the Club." He further found that on each of the days concerning which evidence was given by witnesses the major activity going on in this Club was gaming for money. Accused took part on each occasion and collected 3 cents in $1/- on each game of 'Pai Kow'. The accused was convicted and fined $2,000/-.

Held, that to find that a place is kept for habitual gaming one should consider its activities for a considerable period. If during that period substantial activities other than gaming are carried on the place should not be considered as kept for habitual gaming.

MAGISTRATE'S APPEAL.

N. N. Leicester for the Appellant.

A. V. Winslow for the Crown.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — In this case the appellant was convicted of assisting in the management of a common gaming house. The Magistrate in the course of a very careful judgment found that the premises in which gambling took place were occupied by a Chinese Club known as the Cathay Club. He found that it had an essentially private character. Whatever the nature of the institution, there was ample evidence that the appellant assisted in the management. In the circumstances of the case the prosecution were unable to rely on any of the presumptions which arise in certain circumstances under Cap. 30.

In view of these considerations the question that arose was whether the premises were kept for habitual gaming, within the meaning of section 2 of the Ordinance. It is desirable to bear in mind the distinction between the words "kept or used for gaming" and the words "kept for habitual gaming". The evidence showed that on several days between the first and fifteenth days of the Chinese New Year gaming took place. It is possible and even likely that at that auspicious season the principal interest of the members was gaming. It will be remembered that the otherwise Puritanical Statutes issued by Queen Elizabeth for the University of Cambridge permitted card-playing during the similar period between Christmas and the Twelfth-Night. The Magistrate took the view that a club might become a common gaming house seasonally and temporarily. I think that this is looking at the thing too narrowly. By that process of reasoning the most innocent and respectable of clubs would become a common gaming house during a bridge tournament. To find that a place is kept for habitual gaming I think that one should consider its activities for a considerable period. If during that period substantial activities other than gaming are carried on I do not consider that the place can be considered to be kept for habitual gaming.

I do not think that a few days at a special season can be considered a fair sample.

I consider, therefore, that the case was not proved and I allow the appeal.

Appeal Allowed.

The case of Rex v. Singapore British Malay Football Club, (1934) M.L.J. 3 was cited in the Court below. Ed. M.L.J.

RAJOO v. REX.

[C.C.A. (Murray-Aynsley, C.J., Evans and Brown, JJ.) September 20, 1949]

[Singapore — Criminal Appeal No. 18 of 1949]

Penal Code, S. 379 — Theft of a car — Person found in possession of recently stolen property — Direction to jury.

In this case the appellant was convicted of stealing a motor car with one other accused person. The evidence showed that the two men were found in possession of a motor car which has been stolen a few hours before. The appellant in his defence said that as he was driving his taxi his co-accused whom he knew by sight and who was a paid driver who drove many types of cars, stopped

him and said that his car had run out of petrol and asked him to tow it. The learned trial Judge in the course of his summing up said the accused "have to give a reasonable explanation. They do not have to prove it with the same strictness, but it is for them to give a reasonable explanation".

Held, (1) that the direction was inadequate as it failed to explain to the jury that if they thought that the appellant had given an explanation which might reasonably be true, even though they were not convinced of its truth, that would mean that the prosecution had, upon the whole of the case, left them in a state of doubt and so had failed to discharge their burden of proving the accused's guilt; (2) that the direction was incorrect as it implied that the burden of proof could to some extent be shifted to the accused, the correct principle being that from the beginning of the case until the end, the burden remains upon the prosecution to prove the guilt of the accused; (3) that therefore the conviction in this case must be quashed.

Semble: The direction suggested as a proper direction to the jury by the Court of Criminal Appeal in England in Rex v. Garth[2] — "If the prisoner's account raises a doubt in your minds, then, of course, you ought not to say that the case has been proved to your satisfaction" — is recommended as it is likely to be more easily understood by the jury.

Cases referred to :—

(1) *Rex v. Abramovitch* 11 Cr. App. R. 45.

(2) *R. v. Garth* (1949) 1 All. E.R. 774.

COURT OF CRIMINAL APPEAL.

Appellant in person.

A. V. Winslow (D. P. P.) for the Respondent.

Cur. Ad. Vult.

The Judgment of the Court of Criminal Appeal was given by :—

Brown, J. : — The appellant was convicted (by a majority verdict of 5 to 2) of stealing a motor-car with one other accused person. The evidence was that the owner had left the car outside his house at 11 p.m., having removed the battery for re-charging. At 3.40 a.m. on the same night the appellant, who is a taxi-driver, was found in his taxi towing the stolen car which his co-accused was steering. Thus the case against the two men was that they were found in possession of this motor-car which had been stolen a few hours before.

The other accused gave no evidence and made no statement. But the appellant gave evidence on oath in which he said that as he was driving his taxi his co-accused, whom he knew by sight and who was a paid driver who drove many types of cars, stopped him and said that his car had run out of petrol and asked him to tow it.

This was a case in which it was essential to give to the jury a proper direction on the burden of proof which rests upon the prosecution where a person is found in possession of recently stolen property. The direction given by the learned Judge was in our opinion both inadequate and incorrect. He said :—

> But in a case like this when the Prosecution have given what they say is clear proof of theft, and then you find that these people were in the act of moving the car very soon afterwards (in fact during the same night) then they have to give a reasonable explanation. They do not have to prove it with the same strictness, but it is for them to give a reasonable explanation.

We say that this direction was inadequate because it failed to explain to the jury that if they thought that the appellant had given an explanation which might reasonably be true, even though they were not convinced of its truth, that would mean that the prosecution had, upon the whole of the case, left them in a state of doubt and so had failed to discharge their burden of proving the accused's guilt. We further say that the direction was incorrect because to say that the accused "do not have to prove it with the same strictness" is to imply that they have to prove their case in some way which is not so strict and that the burden of proof has to some extent shifted to the accused. This is not correct. From the beginning of the case until the end the burden remains upon the prosecution to prove the guilt of the accused.

In *Rex v. Abramovitch*[1], it was laid down that the jury should be reminded that the *onus* of proving that the accused knew that the property was stolen remains upon the prosecution; that upon the prosecution establishing that the accused was in possession of property which had recently been stolen they may, in the absence of any explanation by the accused of the way in which the property came into his possession which might reasonably be true, find him guilty; but that if he gives an explanation which might reasonably be true and which is consistent with innocence, although they are not convinced of its truth, the accused is entitled to be acquitted inasmuch as the prosecution would have failed to discharge the duty cast upon it of satisfying the jury beyond reasonable doubt of the accused's guilt.

In the recent case of *R. v. Garth*[2] the Court of Criminal Appeal laid down in different words what should be the direction to a jury in these cases. Lord Goddard said (at p. 774) "A proper direction to the jury would be, 'if the prisoner's account raises a doubt in your minds, then, of course, you ought not to say that the case has been proved to your satisfaction' ". We consider that a direction in these words is likely to be more easily understood by a jury than one which merely reiterates the words used in the case of *Abramovitch.*

In our opinion it is impossible to say that if the jury had been properly directed they would necessarily have come to the same conclusion. We therefore allow the appeal and the conviction is quashed.

Appeal Allowed.

NARAYANASAMY RAJARAM v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) September 23, 1949]

[Singapore — Magistrate's Appeal No. 89 of 1949]

Prevention of Corruption Ordinance, Ss. 3 and 3(a) — Penal Code, Ss. 161, 511 and 417 — Attempted cheating.

In this case a certain Sulaman bin Haji Hussain wanted to make a statutory declaration. He was directed to the appellant who was a clerk in the Stamp Office. The stamp fee on a declaration would have been $1/-. It appears from the evidence of Sulaman that the appellant asked for $3/-. From the evidence of a lift boy it was clear that the appellant was informed that $1/- was required for the stamp and $2/- for writing out the declaration. The duties of the appellant were confined to selling the stamp.

This came to the knowledge of the authorities and Sulaman was given $3/- and again approached the appellant. The appellant drafted a declaration as required by Sulaman who then gave the appellant $3/- of which $1/- was used for the stamp. The appellant kept the balance.

On the strength of this the appellant was charged under S. 3 of the Prevention of Corruption Ordinance and in the alternative under S. 161 of the Penal Code. At the beginning of the hearing the charges were amended and alternative charges were substituted. After the hearing was completed the learned District Judge substituted a charge of attempted cheating. On this charge the appellant was convicted and against this conviction he appealed.

Held, (1) that to support the conviction of attempted cheating it was necessary to show that the appellant attempted to delude Sulaman into the belief that the legal fee for a declaration was $3/-; (2) that the original and the substituted charges of corruption were ill-founded.

MAGISTRATE'S APPEAL.

D. K. Walters for the Appellant.

A. V. Winslow (D. P. P.) for the Respondent.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — The facts in this case are fairly simple and not seriously in dispute. A certain Sulaman bin Haji Hussain wanted to make a statutory declaration. He was directed to the appellant who was a clerk in the Stamp Office. The stamp fee on a declaration would have been $1.00. It appears from the evidence of Sulaman that the appellant asked for $3.00. From the evidence of the lift boy it is clear that the appellant was informed that $1.00 was required for the stamp and $2.00 for writing out the declaration. The duties of the appellant were confined to selling the stamp.

This came to the knowledge of the authorities and Sulaman was given $3.00 and again approached the appellant. The appellant drafted the declaration required by Sulaman who then gave the appellant the $3.00 of which $1 00 was used for the stamp. The appellant kept the balance.

On the strength of this the appellant was charged under the Prevention of Corruption Ordinance section 3 (a) as follows :—

> That he on or about the 6th day of July, 1949, at the Stamp Office, in the Supreme Court Building, being an Agent, namely a Clerk at the said Stamp Office, and as such an employee of the Government of the Colony of Singapore, corruptly accepted money, namely $2/- from one Sulaman bin Haji Hussain, to show favour to the said Sulaman bin Haji Hussain in relation to his principal's affairs, namely to make out a statutory declaration for the said Sulaman bin Haji Hussain, and that he thereby committed an offence punishable under section 3(a) of the Prevention of Corruption Ordinance (No. 41 of 1937).

and in the alternative under section 161 of the Penal Code :—

> That he, being a public servant in the Stamp Office, in the Supreme Court Building, accepted from one Sulaman bin Haji Hussain a gratification other than legal remuneration as a reward to show favour to the said Sulaman bin Haji Hussain, in the exercise of his official function, and that he thereby committed an offence punishable under section 161 of the Penal Code.

At the beginning of the hearing the charges were amended and the following substituted :—

> That he, on or about the 6th day of July, 1949, at or near the Government Stamp Office in the Supreme Court Building, Singapore, being an Agent, namely a G.C.S. Clerk at the said Government Stamp Office, and an employee of the Government of the Colony of Singapore, and as such a person serving under the Crown, corruptly obtained money, namely $2/- from one Sulaman bin Haji Hussain as a reward for showing favour to the said Sulaman bin Haji Hussain, in relation to his principal's affairs, such favour being the preparation of a Statutory Declaration for the said Sulaman bin Haji Hussain on a Government typewriter and during his hours of employment with the said Government, and he thereby committed an offence punishable under section 3 of the Prevention of Corruption Ordinance of 1937.
>
> *Alternatively :*
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> That he, on or about the 6th day of July, 1949, at or near the Government Stamp Office in the Supreme Court Building, Singapore, being an Agent, namely a G.C.S. Clerk at the said Government Stamp Office, and an employee of the Government of the Colony of Singapore, and as such a person serving under the Crown, corruptly obtained money, namely $2/- from one Sulaman bin Haji Hussain, as a reward for doing an act in relation to his principal's affairs, namely the pointing out, to the said Sulaman bin Haji Hussain, of a person in the Stamp Office to